IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO. 4459 OF 2004
(Vineer Carbons Pvt. Ltd. .v. MSEDCL and two others.)

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri Anand Parchure, Advocate for the petitioner.
Shri R.K. Deshpande, Advocate for the respondent Nos.1 to 3.

CORAM : J.P. DEVADHAR &
B.P. DHARMADHIKAR, JJ.
28TH JUNE, 2007

Heard Advocate Shri Anand Parchure appearing for the petitioner and Advocate Shri R.K. Deshpande appearing for the respondent Nos.1 to 3.

The parties had requested for disposing of Writ Petition finally at the stage of admission itself and accordingly the matter was listed before us in the month of April, 2007. The other matters with which the present petition was placed, were disposed of at that time as we noticed that this matter was not directly connected, it was separated and adjourned to after vacation.

Short grievance made by Advocate Parchure in the present petition is that in relation to alleged irregularities noticed on 11.09.2001 by Flying Squad the assessment could not have been under Clause 31(e) of Conditions of Supply framed under the Electricity (Supply) Act, 1948 and it ought to have been under

clause 31(f)(ii). For that purpose, he has taken us through the inspection note, through appellate order and also through the order passed by the JMFC acquitting the petitioner from criminal prosecution. He contends that once the criminal prosecution has been dismissed, there is no question the liability of present petitioner under Clause 31(e).

As against this, Advocate Shri Deshpande for the respondents has stated that Clause 31(e) uses a deeming fiction and also the fact of only detection of the offence. He states that the fact of establishing offence has got totally different significance in so far as the provisions of Section 140 of the Electricity (Supply) Act, 1948 are concerned. For the purposes of assessment deeming fiction itself is relevant and assessment in this case has been resorted to accordingly. He also points out the judgment of the Hon'ble Apex Court in the case of **JMD Alloys Ltd. .v. Bihar State Electricity Board and others (reported in 2003(5) SCC 226)** to contend that the acquittal in criminal case is of no relevance in so far as the present controversy is concerned. He points out that in inspection note prepared on 11.09.2001 and also in joint inspection note to which the petitioner is a party, certain irregularities were noticed and said aspect as recorded in inspection note is not disputed by the

petitioner while filing appeal before the appellate committee or even while approaching this Court in present petition. He contends that once irregularities are accepted requirement of deeming fiction under Clause 31(e) is satisfied and, therefore, the assessment as made needs to be maintained. He further points out that though the petitioner has not brought it to the notice of this Court, the competent authority has later on scaled down the demand/assessment from 28,84,855/- to Rs. 13,94,630/-.

Perusal of the judgment on which Advocate Deshpande has placed reliance particularly paragraph 13 thereof shows that the Hon'ble Apex Court has found that action of Magistrate in accepting final report cannot be construed as a finding delivered by the Criminal Court that theft of electricity was not committed. The Hon'ble Court has noticed that the accused was not even summoned, no charge was framed nor was any evidence recorded and in such a situation, it cannot be held that criminal Court recorded a finding to the effect that the petitioner has not committed theft of electricity. In these circumstances when the judgment dated 01.09.2005 delivered by JMFC, Kamptee in Regular Criminal Case No.143/2002 is perused, we find that the learned JMFC has nowhere in his judgment found that

irregularities mentioned in the spot inspection report dated 11.09.2001 were not in existence. There is no express finding recorded anywhere that the petitioner has not committed any irregularity.

Perusal of Regulation 31(e) clearly shows that when consumer is detected in pilferage or dishonest abstraction of energy with reference to his use of electrical energy, he shall be deemed to have committed theft within the meaning of Indian Electricity Act, 1910. The next sentence of clause states that existence of artificial means for such abstraction shall be prima facie evidence of such dishonest abstraction. Next line is where any of the above offences is detected, the Board has right to discontinue electric supply and it can also charge the consumer for electricity so abstracted and assessment can be made for entire period during which pilferage has taken place subject to maximum of three years. It is to be noticed that in abstract of said clause placed on record as Annexure by the respondents, words used are “where any of the offences is established”, but Shri Deshpande has produced before us the book containing condition supply of electrical energy effective from 01.01.1976 and amended up to 31.07.1998. Clause 31 appears at page 33 of said book and there he has pointed out that word “established” is not there and

word used is “detected”. In view of this position and also in view of the judgment of the Hon'ble Supreme Court, it is clear that acquittal by criminal Court by itself is not sufficient to avoid application of Clause 31(e).

Perusal of inspection note dated 11.09.2001 reveals that the meter was found in locked premises, meter box lead seal had no impression on both sides and paper seal provided by Junior Engineer came away along with the cover of the box. The last irregularity noticed was four number red colour plastic seals i.e. 003052, 3032, 003013 and 003035 were tampered. These findings recorded on 11.09.2001 are not disputed by the present petitioner when it filed an appeal before the appellate Committee under Clause 31(e). The only ground in appeal and only argument before us is that as there is no theft, assessment ought to have been under Clause 31(f) and not under Clause 31(e). When these irregularities are not challenged, in view of deeming provisions and Clause 31(e), we find it difficult to appreciate this effort.

The appellate authority has mentioned that total assessment worked out to Rs.28,84,854.96. However, as pointed out by Advocate Deshpande and as is apparent from submissions filed before us particularly paragraph 4 and paragraph 6 thereof, the said determination has been brought down to Rs.13,94,630/-

only.

Advocate Parchure has pointed out communication dated 19.01.2002 by the Recovery Committee to argue that said communication should be implemented.

We have perused the said communication which is annexed along with writ petition and it only makes an interim or provisional arrangement. This is apparent from Clause No.1 of letter dated 19th January, 2002. The Committee has stated that for the time being Rs.2,00,000/- should be taken as deposit against above case and supply to be reconnected immediately. It also states that additional load extension case of petitioner should be decided by Superintending Engineer, NRC within two months. It is, therefore, clear that this was only an interim arrangement worked out and it did not in any way finally decided the controversy.

In these circumstances, we find no case made out for interference in writ jurisdiction. Writ Petition is dismissed. However, in the circumstances, there shall be no order as to costs.

JUDGE JUDGE

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